

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5627

PETITION OF BARRY A. MALEKZANDI

(Hearing held September 5, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, September 27, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variance from Section 59-C-1.323(b)(1). The petitioner proposes to construct a one-story garage addition that requires a variance of 4.25 feet as it is within 7.75 feet of the side lot line. The required side lot line setback is twelve (12) feet.

Lynne Iadarola, the petitioner's architect, appeared with the petitioner at the public hearing.

The subject property is Lot 6, Block A, Al Marah Subdivision, located at 7916 Burdette Road, Bethesda, Maryland, in the R-200 Zone (Tax Account No. 01825213).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a one-story garage addition in the southeast section of the property.
2. Ms. Iadarola testified that the property is located at the intersection of River Road and Burdette Road, approximately 125 feet from the I-495 interchange. The property faces the Burning Tree Country Club. See, Exhibit No. 9.
3. Ms. Iadarola testified that the downward slope of the eastern side yard is between 8 to 10 feet and that the rear yard drops off approximately 16 feet. Ms. Iadarola testified that a garage is located at the rear of the property, but is inaccessible because the State Highway Administration (SHA) closed the access road. The existing garage is currently used as a shed by the petitioner.
4. Ms. Iadarola testified that a garage could not be located in the western side yard because it would be located near the intersection of the two roads, and curb cuts are not permitted at corners by the Department of Permitting Services (DPS).
5. Ms. Iadarola testified that the front of the property is bordered by a 6.6-foot masonry fence, which was granted a variance by the Board in Opinion No. A-4817, and by a 6-foot privacy fence located at the side and rear yards. See, Exhibit Nos. 7(b), 7(c), 7(d) and 7(g).

6. Ms. Iadarola testified that the proposed construction would use the existing parking pad and would not materially change of the view of the property.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The topography of the petitioner's lot has a substantial slope in the side and rear yards. The access to the property from River Road has been closed by the SHA and DPS does not permit curb cuts at corners, limiting access to the petitioner's property to Burdette Road. The Board finds that these conditions and circumstances are exceptional and peculiar to the property and would result in an undue hardship upon and practical difficulties for the property owner if the variance were to be denied.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a one-story garage addition is the minimum reasonably necessary to overcome the peculiar and exceptional conditions of the property.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds the proposed construction would be screened by the existing 6.6-foot masonry fence and the 6-foot privacy fence and that the proposed construction would not materially change the view of the property for the neighboring homes. The Board further finds that the proposed construction would not be detrimental to the use and enjoyment of adjoining and neighboring properties. The property is across the street from a country club and the record contains no testimony or correspondence in opposition to the variance request.

Accordingly, the requested variance of 4.25 feet from the required twelve (12) foot side lot line setback for the construction of a one-story garage addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of the his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 6(a) through 6(d) and 12(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Mindy Pittell Hurwitz, with Donna L. Barron Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 27th day of September, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.